REMARKS

Claims 1-5 and 7-17 are pending in this application.

Claims 1-5, 7-10 and 12-14 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Somers (U.S. Patent No. 6,243,396) in view of Tunnicliffe et al. (U.S. Patent No. 6,272,110; hereinafter Tunnicliffe). The rejection is respectfully traversed.

Claim 1 recites an apparatus that includes a service level agreement manager that includes an admission controller, a performance measurement module and a specification module. Claim 1 recites that the performance measurement module is configured to measure performance of the service implementation and modify an estimated capacity of the service provider based on the measured performance.

The Office Action states that Somers discloses a performance measurement module that is configured to measure performance of a service implementation, but admits that Somers does not disclose modifying an estimated capacity of the service provider based on the measured performance (Office Action – page 3). The Office Action, however, states that Tunnicliffe discloses this feature and points to col. 6, lines 53-67 and col. 7, lines 1-3 for support (Office Action – page 3). Applicant respectfully disagrees for at least the following reasons.

To begin with, Tunnicliffe is directed to a method and apparatus for managing at least part of a communications network (Tunnicliffe – col. 1, lines 7-9). With respect to the above-noted cite, Tunnicliffe at col. 6, line 37 to col. 7, line 3 discloses that agents may negotiate service level agreements (SLAs) with each other through SLA proposals. The negotiation model is implemented using a declarative knowledge base (KB) and a procedural KB. Tunnicliffe also discloses that the agents can negotiate over the price of a service by generating a price offer and continuing to counter-propose the initial offer. This portion of Tunnicliffe clearly does not

disclose modifying an estimated capacity of the service provider based on the measured performance, as recited in claim 1.

Tunnicliffe does disclose that a network operator monitors network traffic entering the network from each of customer sites 203 at points 207, 208 and 209 and predicts further demand (col. 4, lines 10-23). The network operator may pro-actively reconfigure resources to cope with increased traffic, detect when customers are likely to exceed agreed levels of service, agree to carry the excess traffic, cut back on inter-site traffic or block excess traffic (Tunnicliffe – col. 4, lines 24-40). Tunnicliffe also discloses that predictor 13 (Fig. 1) may be used to predict when the demand will exceed the capacity, the extent of the predicted excess and when the demand will return below capacity (Tunnicliffe – col. 4, lines 40-59 and Fig. 3).

In summary, these portions of Tunnicliffe may disclose that a network operator may predict short term demand on the network and make various adjustments based on the amount of demand. None of these portions of Tunnicliffe, however, disclose modifying an estimated capacity of the service provider based on the measured performance, as recited in claim 1. In other words, determining when short term demand may exceed agreed levels of service and making any of the adjustments discussed in Tunnicliffe is not equivalent to and does not suggest modifying an estimated capacity of a service provider based on a measured performance, as recited in claim 1.

Therefore, the portions of Tunnicliffe pointed to on page 3 of the Office Action, as well as the other portions discussed above relating to short term demand on the network, do not disclose or suggest modifying an estimated capacity of a service provider based on the measured performance, as recited in claim 1.

For at least the reasons discussed above, the combination of Somers and Tunnicliffe does not disclose or suggest at least this feature of claim 1. Accordingly, withdrawal of the rejection and allowance of claim 1 are respectfully requested.

Claim 2 depends on claim 1 and is patentable for at least the reasons given with respect to claim 1. Accordingly, withdrawal of the rejection and allowance of claim 2 are respectfully requested.

Independent claims 3, 5, 8 and 12 recite features similar to those discussed above with respect to claim 1. Similar to the discussion above with respect to claim 1, the combination of Somers and Tunnicliffe does not disclose or suggest features of claims 3, 5, 8 and 12. Accordingly, withdrawal of the rejections and allowance of claims 3, 5, 8 and 12 are respectfully requested.

Claims 4, 7, 9, 10, 13 and 14 variously depend on claims 3, 5, 8 and 12 and are patentable for at least the reasons their respective independent claims are patentable. Accordingly, withdrawal of the rejections and allowance of claims 4, 7, 9, 10, 13 and 14 are respectfully requested.

Claims 11 and 15 have been rejected under 35 U.S.C. § 103 as being unpatentable over Somers in view of Tunnicliffe and further in view of Ball et al. (U.S. Patent No. 6,446,200; hereinafter Ball). The rejection is respectfully traversed.

Claims 11 and 15 are dependent on claims 8 and claim 12, respectively, and are believed to be allowable for at least the reasons claims 8 and 12 are allowable. Ball does not remedy the deficiencies in the disclosures of Somers and Tunnicliffe with respect to claims 8 and 12 discussed above. Accordingly, withdrawal of the rejection and allowance of claims 11 and 15 are respectfully requested.

Claims 16 and 17 have been rejected under 35 U.S.C. § 103 as being unpatentable over Somers in view of Tunnicliffe and further in view of Aronberg et al. (U.S. Patent No. 6,117,188; hereinafter Aronberg) and Knight et al. (U.S. Patent No. 6,442,608; hereinafter Knight). The rejection is respectfully traversed.

Claims 16 and 17 are dependent on claim 8 and are believed to be allowable for at least the reasons claim 8 is allowable. Neither Aronberg nor Knight, taken singly or in combination, makes up for the deficiencies in the disclosures of Somers and Tunnicliffe described above with respect to claim 8. In addition, claims 16 and 17 recite additional features not disclosed or suggested by any of the cited references.

For example, claim 16 recites that each of the plurality of client processes is assigned a number of tokens and when determining whether to accept the request from a first client process to a first service level manager, the first service level manager is configured to determine whether to accept the request based on the number of tokens associated with the first client process. As to claim 16, the Office Action states that Knight discloses a network in which each of a number of client processes is assigned a number of sessions and that a first service level manager is configured to determine whether to accept a request from a first client process based on the number of sessions associated with the first client process and points to col. 23, line 33 to col. 25, line 48 for support (Office Action – pages 10-11). The Office Action admits that Knight does not disclose the use of tokens associated with a client process, but states that Aronberg discloses the use of a fixed number of tokens used to regulate network access and points to col. 4, line 56 to col. 5, line 30 for support (Office Action – page 11). The Office Action further states that it would have been obvious to combine Knight and Aronberg "because tokens provide a functional

alternative to the counter as implemented in Knight" (Office Action – page 11). The applicant respectfully disagrees.

As discussed in the previous response, Knight is directed to managing the access of a network system using distributed authorization controlled by distributed nodes (Knight – col. 1, lines 15-18). Aronberg, in contrast, is directed a system for distributing software in a network environment (Aronberg – Abstract). Knight and Aronberg are clearly directed to different environments and the applicant maintains that it would not have been obvious to combine features from these disparate environments without the benefit of the applicant's disclosure. The applicant also notes that no portion of either Knight or Aronberg is pointed to as providing objective motivation for combining these references.

Further, the Office Action states that it would have been obvious to combine the teachings of Somers-Tunnicliffe with the teachings of Knight-Aronberg "because limiting access of specific clients would ensure a more consistent level of service for all clients" (Office Action – page 11). The applicant respectfully disagrees.

Similar to the discussion in the previous response, no portion of any of the four references is pointed to as providing objective motivation for combining the four references. The motivation provided in the Office Action is a conclusory statement regarding an alleged benefit resulting from the combination. Such motivation does not satisfy the requirements of 35 U.S.C. § 103.

In addition, as admitted in the Office Action, Knight does not disclose assigning a number of tokens to each of a number of client processes, as recited in claim 16, but indicates that tokens may be used as a functional alternative to the counter used in Knight. The Office Action also relies upon Aronberg as disclosing the use of tokens (Office Action – page 11).

More particularly, Aronberg at col. 4, line 56 to col. 5, line 30 has been alleged to disclose the use of tokens to regulate network access. This portion of Aronberg actually discloses that a dialog box 401 may be used by an administrator to control the number of concurrent software distributions (See Fig. 4). A token server box 401B may be checked to indicate use of the token server feature. An agent may then wait for a token to allow the user to download applications (Aronberg – col. 5, lines 1-15). This portion of Aronberg does not disclose determining whether to accept a request based on the number of tokens associated with a client process, as recited in claim 16. Therefore, even if Knight and Aronberg were combined with the combination of Somers and Tunnicliffe, the claimed invention would not result.

In response to some of these arguments made in the previous response, the Office Action states that Aronberg "describe allotting a number of tokens to users that access the network some form of client process (in Aronberg, col. 2, lines 40-61, the users access a server thus using some sort of client process.)" (Office Action – page 12).

Aronberg at col. 2, lines 40-61 discloses that a server controls the number of users simultaneously distributing software by using a token server. The token server issues a token authorization signal to allow an agent workstation to download the software. This is not equivalent to determining whether to accept a request based on the number of tokens associated with a client process, as recited in claim 16.

For at least these additional reasons, withdrawal of the rejection and allowance of claim 16 are respectfully requested.

Claim 17 recites that when the request from the first client process is accepted, the first service level manager is further configured to deduct a number of tokens from the first client process. As to claim 17, the Office Action states that Knight discloses deducting a count

associated with a first client process when a request from a client process is accepted and points to Knight at col. 23, line 33 to col. 25, line 48 for support (Office Action – page 11). The Office Action further states that it would have been obvious to use tokens instead of a count for the reasons discussed with respect to claim 16. The applicant respectfully disagrees.

Knight discloses that an entity, such as a company, may be assigned a threshold value associated with a maximum number of sessions that may be established for the entity at a particular time (Knight – col. 22, lines 35-47). Assigning sessions to an entity, such as a company, is not equivalent to assigning sessions to each of a plurality of client processes. In addition, Knight does not further disclose deducting a number of sessions from the client process if the request is accepted. Rather, Knight, as best understood by the applicant, merely compares the local session threshold value with the local session counter value to determine whether to authorize the request (Knight – col. 23, line 45 to col. 24, line 65). This is not equivalent to and does not suggest deducting a number of sessions or tokens from a first client process if the request is accepted. Aronberg also does not disclose deducting a number of tokens from the first client process when a request from the first client process is accepted. Therefore, the combination of Somers, Tunnicliffe, Aronberg and Knight does not disclose or suggest this feature of claim 17.

In response to some of these arguments made in the previous response, the Office Action states that Knight discloses that deducting a number of sessions from a particular entity also deducts the number of sessions for the associated client process used to access the network and points to Fig. 1A of Knight for support (Office Action – page 13). Fig. 1A of Knight illustrates a system 100 including one or more clients 102a-d, one or more network access servers 104 and 106, one or more local distributed session counters (DSCs) 108 and 110, a central or

authoritative DSC 112 and a network 114 (Knight – col. 7, lines 13-18). Knight does not disclose or suggest that any of DSCs 108-112 deduct tokens (or sessions) from a first client process when the first client process is accepted, as recited in claim 17.

For at least these additional reasons, withdrawal of the rejection and allowance of claim 17 are respectfully requested.

CONCLUSION

In view of the foregoing remarks, the applicant respectfully requests withdrawal of the outstanding rejections and the timely allowance of this application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 07-2347 and please credit any excess fees to such deposit account.

Respectfully submitted,

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